

<b>Committee:</b> Development Committee	<b>Date:</b> 15 <sup>th</sup> December 2016	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b> Corporate Director of Development and Renewal	<b>Title:</b> Applications for Planning Permission  <b>Ref No:</b> PA/15/02774
<b>Case Officer:</b> Adam Hussain	<b>Ward:</b> Whitechapel

## 1. APPLICATION DETAILS

**Location:** Site at South East Junction of Whitechapel Road and New Road, Whitechapel Road (Royal London Hospital)

**Existing Use:** Temporary Car Park (Use Class: Sui Generis)

**Proposal:** Application for variation of condition no. 1 (temporary time period) of planning permission dated 16/11/2012, ref: PA/12/01817 for the retention of a temporary car park until 31st December 2017.

**Drawing and documents:** Drawing ref. RLH-L52-TPExt-002-DWG-001; Site Location Plan. AE/LN/00/00/07.

Letter titled 'Decant Strategy' - dated 26<sup>th</sup> September 2016.

**Applicant:** Barts NHS Health Trust

**Ownership:** Barts NHS Health Trust

**Historic Building:** Grade II Listed Terrace adjoins to South

**Conservation Area:** London Hospital

## 2. EXECUTIVE SUMMARY

2.1 The officers have considered the particular circumstances of this application against the Council's approved planning policies contained in the London Borough of Tower Hamlets Core Strategy (2010), Tower Hamlets Managing Development Document (2013) the London Plan (2015) and National Planning Policy Framework (2012) and has found that:

2.2 The proposal for an extension of time of the temporary car park raises concerns. This is in the context of the number of extensions of time that have been sought previously. It is also in the context of the impacts of the proposal on the provision of open space and on the character, setting and appearance of the identified heritage assets.

- 2.3 During the life of the application the applicants have responded to these concerns in writing. The applicants have acknowledged that the use has been in place far longer than originally anticipated. The applicants have stated that this is the final time they intend to seek an extension of the approved time for this use. The applicants have submitted a timetable for decant of the site and restoration to green landscaped public realm
- 2.4 In the context of this response Officers consider the applicants are now fully aware of the planning policy assessment of the continued use of the car park. In the context of the intentions for decant set out by the Trust and the reinstatement of the site to public realm, Officers consider the proposal for an extension of time until 31<sup>st</sup> December 2017 is acceptable.

### 3. RECOMMENDATION

- 3.1 That the Committee resolves to **APPROVE the grant of planning permission for the** variation of condition no. 1 (temporary time period) to read as follows:

1. The use hereby permitted shall be retained for a temporary period only until 31<sup>st</sup> December 2017 on or before which date the use shall be discontinued.

Reason: The car park is detrimental to the character and appearance of the London Hospital Estate Conservation Area, and to the provision of public open space, and is unacceptable other than for this period.

- 3.2 The following existing conditions shall continue to apply to any consent:

2. For the duration of the use of the land as a car park, a temporary traffic barrier shall be maintained across Mount Terrace for the use of residents and the utility and emergency services and to prevent other vehicles from using Mount Terrace other than at the entrance to the car park.

Reason: In the interests of security and to protect the amenity of residents in Mount Terrace in accordance with policy SP10 (4) of the Tower Hamlets Core Strategy 2010, policy DM25 of the Tower Hamlets Managing Development Document (2013).

3. For the duration of the use of the land as a car park, a traffic barrier shall be maintained across the entrance to the car park and operated in accordance with the BARTS Health NHS Trust parking permit process.

Reason: In the interests of security and to protect the amenity of residents in Mount Terrace in accordance with policy SP10 (4) of the Tower Hamlets Core Strategy 2010, policy DM25 of the Tower Hamlets Managing Development Document (2013).

4. On the discontinuance of the use, the site shall be landscaped in accordance with the details approved by the council on 13 June 2008 under Ref. PA/08/771 pursuant to Condition 14 of Planning Permission PA/04/00363 or any alternative details that may be approved by the local planning authority. The landscaping shall be completed by the end of the first planting season following the cessation of the use. Any trees or plants which within a period of 5 years from the completion of the approved landscaping scheme die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

Reason: To ensure the reinstatement and satisfactory appearance of the grounds of the Royal London Hospital is acceptable in accordance with the requirements of policy SP04 of the Tower Hamlets Core Strategy 2010.

5. CCTV camera surveillance of the car park and its entrance together with the lighting bollards shown on the plan hereby approved shall be maintained for the duration of the use.

Reason: In the interests of security and to protect the amenity of residents in Mount Terrace in accordance with policy SP10 (4) of the Tower Hamlets Core Strategy 2010, policy DM25 of the Tower Hamlets Managing Development Document (2013).

#### **4. PROPOSAL AND LOCATION DETAILS**

##### **Proposal**

- 4.1 The continued use of the existing temporary car park up until 31<sup>st</sup> December 2017. The car park consists of 34 spaces for staff of the hospital. The car park is hard landscaped at ground level.



Fig.1: Application site.

##### **Site and Surroundings**

- 4.2 The application site is a car park roughly rectangular in shape with an area of approximately 0.097ha. The car park is located immediately to the east of the junction of Whitechapel Road and New Road. It is accessed from New Road, via the western end of Mount Terrace.
- 4.3 The car park is located adjacent to 22-34 Mount Terrace, to the south. This is a terrace of Grade II listed late 18<sup>th</sup> century/early 19<sup>th</sup> century three-storey residential properties. The application site is located within the London Hospital conservation area.

- 4.4 Prior to the implementation of the temporary car park the application site was a green open space with mature trees, although it is understood it was not open to the public. The 2005 redevelopment consent for the Royal London Hospital includes this as a green landscaped space. The application subject of this report was first approved in 2005 to provide temporary facilities on this site during the hospital construction works. The temporary consent includes a condition to secure the reinstatement of the site as a green landscaped space following the cessation of the temporary use.



Fig. 2: Hospital Redevelopment Consent: Application site outlined in red.

## Background

- 4.5 The application seeks to vary condition 1 of the planning permission PA/12/01817. This condition controls the period in which the temporary use can be in place. The use was first approved in 2005. This consisted of a temporary restaurant and car park and was permitted until November 2010. A subsequent application for extension of this use until November 2012 was approved. After this the restaurant element was no longer needed. An application for extension of the car park use until December 2015 was approved. The application subject of this report seeks to extend the car park use until December 2017.
- 4.6 The original application was approved subject to a number of conditions. Condition 14 requires submission and approval of details of the reinstatement scheme for the site. Details pursuant to this condition were submitted by the Barts NHS Trust in 2008 and subsequently approved. The approved treatment is a green landscaped space with a number of new trees. The condition requires the approved reinstatement treatment to be implemented by the end of the first

planting season following the cessation of the use.

- 4.7 The redevelopment consent for the hospital includes permission for a permanent solution to car parking. The consent provides for a purpose-built multi-storey car park to accommodate 322 spaces, to be built on the corner of New Road and Stepney Way. The previous extensions of time for the temporary car park have been considered on the premise of the multi-storey car park being built. The current application was also accompanied by a planning statement that referred to this being a temporary extension until the permanent parking solution was implemented. The Trust have now acknowledged that they no longer intend to build the multi-storey and are looking at redevelopment options for the wider site.

## **5 Relevant Planning History**

- 5.1 PA/04/00363: Erection of a temporary restaurant (with 200 covers, ancillary kitchens and preparation areas) with car park and service access, together with the removal from site of any hazardous material that may be identified. Approved: 31<sup>st</sup> March 2005.

This was a temporary permission until 1<sup>st</sup> November 2010.

- 5.3 PA/08/00771: Reinstatement of front lawn upon cessation of use of temporary staff restaurant and car park pursuant to condition 14 of planning permission dated 31<sup>st</sup> March 2005, reference PA/04/00363. Approved: 13<sup>th</sup> June 2008.

This application is for approval of details of how the application site will be reinstated after the temporary use has vacated.

- 5.4 PA/09/02608: Variation of condition 2 of Council's planning permission dated 31<sup>st</sup> March 2005, reference PA/04/363 to permit temporary restaurant and car park to remain until 1<sup>st</sup> November 2012. Approved: 26<sup>th</sup> January 2010.

This was a temporary permission until 1<sup>st</sup> November 2012.

- 5.5 PA/12/01817: Variation of condition 1 of planning permission granted on 26<sup>th</sup> January 2010, reference PA/09/2608 to enable the retention of a temporary car park for a further limited period until 31<sup>st</sup> December 2015. Approved: 16<sup>th</sup> November 2012.

This was a temporary permission until 31<sup>st</sup> December 2015.

### Tree Works and Applications for approval of details related to the Temporary use

- 5.6 PA/04/00366: Tree works comprising removal of 10 trees, in connection with works to construct a temporary restaurant, together with car park and service access. Approved 15<sup>th</sup> June 2004.

- 5.7 PA/05/00104: Tree works to London Plane (situated at the end of Mount Terrace, near No. 34) consisting of crown reduction by 30%, crown lift to 5m and prune roots to allow for new access road, in connection with temporary restaurant. Approved 18<sup>th</sup> April 2005.

- 5.8 PA/05/00850: Approval of details pursuant to Conditions 5a (materials), d (tree protection), e (walls, fences and railings), f (storage and collection of

rubbish), g (noise mitigation), h (external lighting), i (signage), 7 (archaeological investigation), 8 (land contamination) & 12 (disabled access). of Planning Permission ref. PA/04/00363 dated 31st March 2005 for a temporary restaurant and car park. 29<sup>th</sup> June 2005.

- 5.9 PA/05/01000: Approval of details pursuant to Condition 5b (details of vehicular access and gates), c (temporary landscaping) and 11 (details of CCTV) of Planning Permission PA/04/363 dated 31st March 2005. Approved 26<sup>th</sup> July 2005.
- 5.10 PA/05/02143: Submission of details for the temporary restaurant pursuant to condition 5a (materials) of planning permission dated 31st March 2005, reference PA/04/363. Approved: 25<sup>th</sup> January 2006.
- 5.11 PA/08/00771: Approval of details pursuant to condition 14 (scheme for reinstatement of site) of planning permission dated 31/03/05, reference PA/04/00363. Approved: 13<sup>th</sup> June 2008.
- 5.12 PA/08/02073: Approval of details pursuant to condition 5a (external materials) of planning permission dated 31st March 2005, reference PA/04/363. Approved: 23<sup>rd</sup> February 2009.

#### Main Hospital Redevelopment Consent

- 5.13 PA/04/0611: Redevelopment and refurbishment of the Royal London Hospital.  
Approved: 31st March 2005.

## **6. POLICY FRAMEWORK**

- 6.1 For details of the status of relevant policies see the front sheet for “Planning Applications for Determination” agenda items. The following policies are relevant to the application:

### **6.2 Government Planning Policy**

National Planning Policy Framework (NPPF) 2012  
National Planning Policy Guidance (NPPG) 2013

### **6.3 London Plan (Minor Alterations 2016)**

7.18 Protecting Open Space and Addressing Deficiency  
7.19 Biodiversity and access to nature  
7.8 Heritage assets and Archaeology

### **6.4 Tower Hamlets Core Strategy 2010**

SP04 - Creating a Green and Blue Grid  
SP10 - Creating Distinct and Durable Places  
SP12 - Delivering placemaking

### **6.5 Managing Development Document 2013**

DM10 - Delivering open space  
DM23 - Streets and the public realm  
DM24 - Place-sensitive design

DM25 - Amenity  
DM27 - Heritage and the historic environment

## 6.6 Whitechapel Vision Masterplan SPD (2013)

Key Place transformation 4: Med City Campus

## 7. CONSULTATION

The statutory consultation period was commenced on 19/10/15. A second consultation period was commenced on 14/10/16. The second consultation took place following the receipt of an additional letter by the applicant's agent regarding the proposed decant strategy for the site.

- 7.1 The views of the Directorate of Development and Renewal are expressed in the MATERIAL PLANNING CONSIDERATIONS section below. The following were consulted regarding the application:

Transport for London

- 7.2 First and Second Consultations: No objection.

Tower Hamlets Highways and Transportation

- 7.3 First Consultation – The proposal is for a further extension to the temporary planning permission allowing an at grade car park for staff whilst the permitted multi-storey car park is built. However, many years have passed since the original application and work hasn't begun on the multi-storey car park. If this is unlikely to be built then the applicant should, in the view of Highways and Transportation, be applying for full-planning permission rather than continuing to apply for extensions to the temporary use.

Second Consultation – The applicant states that this extension will be the last application for such use. There is no objection to one further extension.

## 8. LOCAL CONSULTATION.

- 8.1 The two consultation periods each involved a total of 50 planning notification letters sent to nearby properties as detailed on the attached site plan. A site notice was displayed and a press notice was advertised.

In respect of the **first** consultation 3 letters of representation and a petition with 28 signatures have been received in objection.

A summary of the comments received are as follows:

- This development was intended to enable the works on the new buildings for the Royal London Hospital to be carried out. These works have been completed.
- The original planning application in 2005 was only for 6 years until 2011 and included a condition that it would be turned back to green space at the end of this period. Object to the disregard of this agreement.

- Multiple applications have been made to extend its use. Have been without the green space for 10 years.
- The applications have been granted despite the fact that many of the original conditions have not been complied with.

In respect of the **second** consultation 4 letters of representation have been received in objection.

A summary of the comments are as follows:

- Object to the way the NHS Trust are maintaining the temporary car park and the spirit in which the Trust are extending the 'temporary' car park's use.
- The original application includes a commitment to provide a barrier to the temporary car park (Condition 5b) to "control access, and avoid disturbance to adjoining residents". The gates to the temporary car park are broken and have been in a state of disrepair for a number of years.
- Experience late night noise and disturbance from cars in the car park by people who argue, occasionally fight and drive around. This might not be a problem if the gates to the car park were maintained.
- Flooding and litter on the access road to the temporary car park currently causes an unsightly environment. There is a drainage problem that has been neglected by the Trust.
- The applicant's letter is open about the continual applications for extension of use over the past 13 years. We request that the extending of the temporary car park land use is now given a definitive deadline at which point the agreed reinstatement is enforced by the planning department.

## **9. MATERIAL PLANNING CONSIDERATIONS**

9.1 The main planning issues raised by the application that the committee must consider are:

- Principle of extension of time
- Visual Amenity and Heritage Impacts
- Compliance with Conditions
- Highways Impacts

### **Principle of extension of time**

9.2 Core Strategy (2010) policy SP03 seeks to deliver healthy and liveable neighbourhoods that promote active and healthy lifestyles and enhances people's wider health and well-being. This includes providing a hierarchy of accessible, high-quality health facilities, services and premises to meet the needs of the existing and future population.



- 9.3 Core Strategy (2010) policy SP04 (Creating a green and blue grid) sets out the Council's objective of creating a high-quality, well-connected and sustainable natural environment of green and blue spaces. This includes protecting and safeguarding existing open space and promoting publically accessible open spaces as multi-functional spaces that cater for a range of activities, lifestyles ages and needs.
- 9.4 The application for the temporary use in this location involved the loss of the previously existing green space. This was considered acceptable on a temporary basis, in part because the site is not designated as open space reflecting the fact it had not historically been accessible to the public. Notwithstanding this the biodiversity and visual amenity impacts of the proposal were noted including the loss of 6 mature trees. In this context the permission is subject to a condition to return the site to a green landscaped space for cessation of the temporary use. Officers are cognisant that it is approximately 11 years since the permission for the temporary use was first granted. In this context Officers consider the representations by local residents stating objection to a further extension of time as reasonable.
- 9.5 The length of time the temporary use has been in place and absence of any meaningful progress on implementing the approved permanent parking solution raise substantial concerns. As part of the discussions during the life of this application these concerns have been expressed to the Trust in particular Officers' considered view that the proposal appears to depart from the understanding for the first application of a use that is temporary in nature.
- 9.6 Following submission of the application subject of this report the Trust acknowledge the concerns raised regarding the number of applications there have now been. The Trust have stated this is to be the final application of an extension of time for this site, irrespective of the progress or otherwise of permanent parking solutions for the hospital estate.
- 9.7 A letter has been provided by the Trust's agents dated 26<sup>th</sup> September 2016. The letter states that *"it is acknowledged that the temporary use has been on site far longer than originally anticipated"*. It states that *"the applicant confirms that this will be the final temporary use extension application on the Front Green"*. The letter then sets out a Decant Strategy with specific dates for specific actions. The key dates are Oct 2017 – Commence decant of Front Green Park, Dec 2017 – Temporary use removed and discontinued, March 2018 – Approved Front Green Landscaping (PA/08/00771) complete. The letter concludes:
- "I trust this letter and decant strategy provides the Council enough confidence that they can support application PA/15/02774 and confidence that this will be the final application to extend the temporary use of the Front Green site"*.
- 9.8 The letter has been subject of a fresh public consultation with local residents given the opportunity to review the decant strategy set out. The Barts Trust clearly plays a substantial role in respect of the Royal London Hospital and the health and community functions it serves. Notwithstanding this, as one of the largest landowners in the local area the management of its estate has the potential for impacts.
- 9.9 Officers consider the letter provided by the Trust avoids further doubt about the acknowledged intentions of the future of the temporary car park. Subject to the approval of the current application the Trust commits to decanting the site by December 2017 and implementing the approved reinstatement treatment by

March 2018. The Council cannot prevent a further application for extension of time being submitted. If such a use were to continue this would be a matter for the Council's planning enforcement team to consider.

### **Visual Amenity and Heritage Impacts**

- 9.10 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in respect of Listed buildings, in considering whether to grant planning permission there shall be 'special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'.
- 9.11 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in respect to any buildings or other land in a conservation area, in considering whether to grant planning permission 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'.
- 9.12 Managing Development Document policy DM27 (Heritage and the Historic Environment) states that 'development will be required to protect and enhance the borough's heritage assets, their setting and their significance as key elements of developing the sense of place of the borough's distinctive 'Places''.
- 9.13 The application site has an immediate adjacent relationship with the Grade II Listed properties to the south 'Mount Terrace'. The application site forms part of the London Hospital Conservation Area. The original application involved the loss of a number of previously existing trees and the green landscaped nature of the space. The replacement of this with a temporary restaurant and car park is considered to cause harm to the setting of the adjacent listed buildings and to the character and appearance of the conservation area. The restaurant element has gone. The retention of the hard landscaped car park is considered detrimental to the setting and character and appearance of the heritage assets.
- 9.14 In accordance with the original consent the identified harm is considered acceptable. This is in the context of the public benefit of ensuring the Hospital can maintain its functions during the implementation of the estate wide redevelopment consent. This is also in the context of this being for a temporary period, and subject to a planning control to reinstate the site. Officers consider in respect of impact on visual amenity and heritage assets the continued use of the site until December 2017 should be acceptable. Officers consider a further use beyond this time would be contrary to Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and policy DM27 to an extent that would not be justified.

### **Compliance with Conditions**

- 9.15 Representations in response to the public consultation allege that condition 3 to the existing consent has not been complied with. Condition 3 states that "*For the duration of the use of the land as a car park, a traffic barrier shall be maintained across the entrance to the car park and operated in accordance with BARTS Health NHS Trust parking permit process*".
- 9.16 The representations from residents state that the barrier to the car park is broken and that this is allowing use of the car park by people not associated with the hospital, causing noise and disturbance. The barrier is in place, however, for each site visit by officers it has been open and not appearing to be operational.

This issue was also raised in respect of the 2012 application for an extension of time. The Development Committee report in respect of that application states:

*“Residents have complained that the BARTS Health NHS Trust has failed to maintain the traffic barrier across Mount Terrace, the subject of the legal agreement with the council in 2005. Since the car park use commenced, Skanska have provided two types of system following consultation with the neighbours (initially a hydraulic barrier, followed a swing barrier). Barriers have been vandalised and a third was installed in September 2012 and appears to be operating satisfactorily.”*

- 9.17 The Council received further complaints on this matter shortly after the 2012 consent. Correspondence with the Trust was sent in January and February 2013. In response to the current objections and apparent continuation of this issue the Trust has written to the Council and states that there will be a *‘focused deployment of security patrols and a targeted approach to re-implementing the car park barrier/gates...the Metropolitan police...will now also ensure this area is minded with the local partnership patrolling.’*
- 9.18 The requirement for a barrier to be maintained across the entrance to the car park is a condition of the previous consent and would not change under the current application. This matter has been passed to the Council’s planning enforcement team to investigate.

### **Highways Impacts**

- 9.18 Notwithstanding the above issues in respect of compliance with condition 3 the continued use of the site until December 2017 as a temporary car park is unlikely to generate additional impacts on the public highway.

## **10. Human Rights Considerations**

- 10.1 In determining this application, the Council is required to have regard to the provisions of the Human Rights Act 1998. In the determination of a planning application, the following are particularly highlighted to Members:-
- 10.2 Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights (“ECHR”). Certain parts of the “Convention” here meaning the ECHR, are incorporated into English Law under the Human Rights Act 1998. Various Conventions rights are likely to be relevant to the development proposal including:
- Entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law in the determination of a person’s civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process;
  - Rights to respect for private and family life and home. Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public’s interest (Convention Article 8); and
  - Peaceful enjoyment of possession (including property). This does not impair the right to enforce such laws as the State deems necessary to

control the use of property in accordance with the general interest (First Protocol, Article 1). The European Court has recognised that “regard must be had to the fair balance that has to be struck between competing interests of the individual and of the community as a whole”

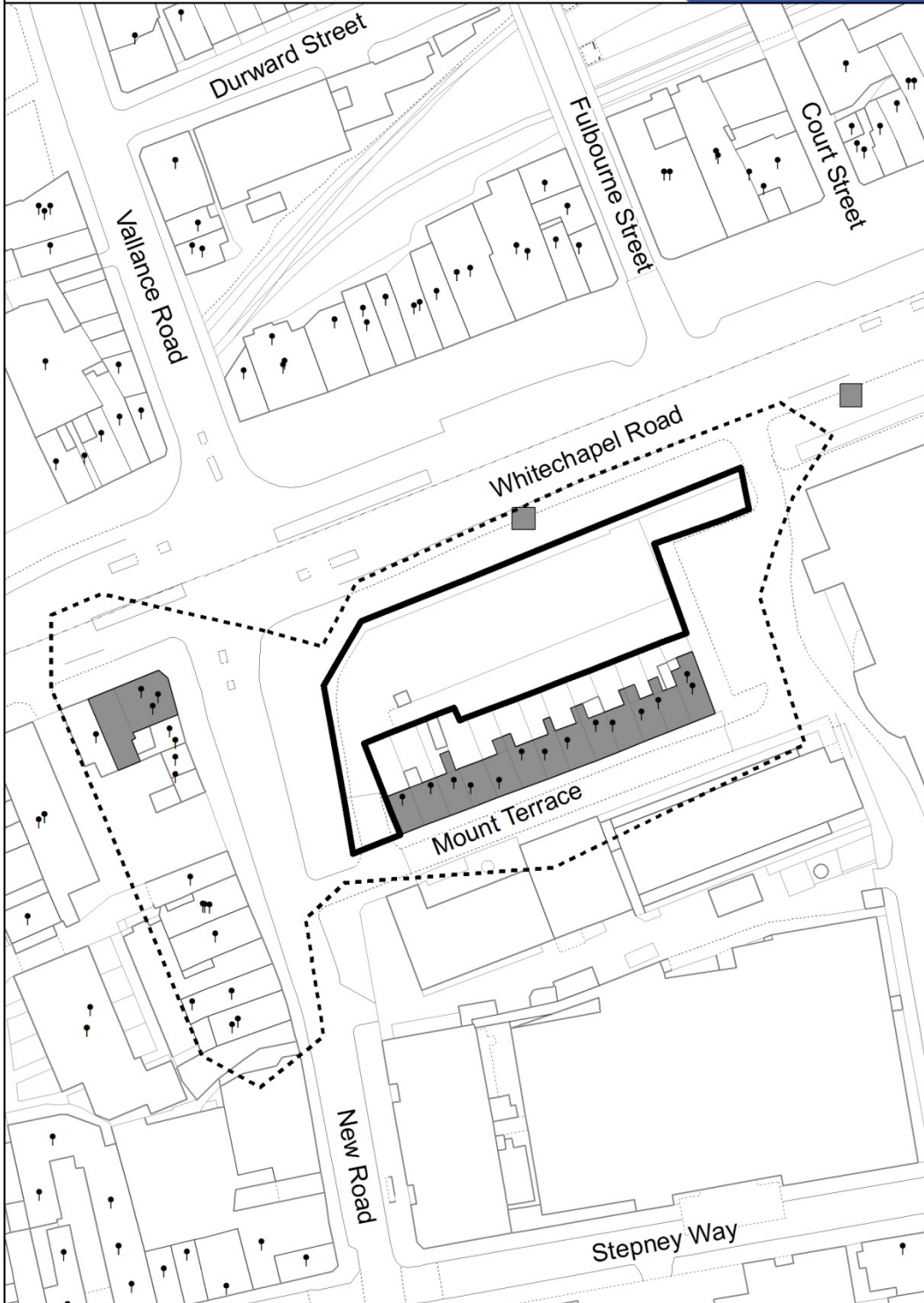
- 10.3 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as local planning authority.
- 10.4 Members need to satisfy themselves that the measures which are proposed to be taken to minimise, inter alia, the adverse effects of noise, construction and general disturbance are acceptable and that any potential interference with Article 8 rights will be legitimate and justified.
- 10.5 Both public and private interests are to be taken into account in the exercise of the Council’s planning authority’s power and duties. Any interference with a Convention right must be necessary and proportionate.
- 10.6 Members must, therefore, carefully consider the balance to be struck between individual rights and the wider public interest.
- 10.7 As set out above, it is necessary, having regard to the Human Rights Act 1998, to take into account any interference with private property rights protected by the European Convention on Human Rights and ensure that the interference is proportionate and in the public interest.
- 10.8 In this context, the balance to be struck between individual rights and the wider public interest has been carefully considered. Officers consider that any interference with Convention rights is justified.

## **11. Equalities**

- 11.1 The Equality Act 2010 provides that in exercising its functions (which includes the functions exercised by the Council as Local Planning Authority), that the Council as a public authority shall amongst other duties have due regard to the need to-
  - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 11.2 The protected characteristics set out in the Equality Act are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Equality Act acknowledges that compliance with the duties set out may involve treating some persons more favourably than others, but that this does not permit conduct that would otherwise be prohibited under the Act.
- 11.3 With regard to age, disability, gender reassignment, pregnancy and maternity, race religion or belief, sex and sexual orientation there are no identified equality considerations.

## **12. CONCLUSION**

- 12.1 All other relevant policies and considerations have been taken into account. Variation of Condition 1 should be GRANTED for the reasons set out in the EXECUTIVE SUMMARY and MATERIAL PLANNING CONSIDERATIONS sections as set out in the RECOMMENDATION at the beginning of this report.



Planning Application Site Boundary	Locally Listed Buildings	Land Parcel Address	
Consultation Area	Statutory Listed Buildings	0 40 m	

This Site Map displays the Planning Application Site Boundary and the neighbouring Occupiers / Owners who were consulted as part of the Planning Application process.  
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